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SIPDIS

SENSITIVE

DEPT FOR EAP/TC, EB/TRA/OTP

E.O. 12958: N/A

TAGS: [FAIR](#) [ECON](#) [TW](#)

SUBJECT: UNITED AIRLINES CONCERN ON FORCE MAJEURE DELAY  
LIABILITY

Summary

1. (SBU) United Airlines raised concerns with AIT/T about Taiwan's Civil Aviation Law, which imposes compensation liability on airlines for delay due to causes beyond the control of the airline (force majeure). AIT agrees with United that the relevant regulation is not consistent with the Montreal Convention of 1999. The American Chamber of Commerce in Taipei will include this issue in its white paper for 2005. Taiwan's Civil Aeronautics Administration (CAA) has drafted an amendment that would redress United's concerns, but has decided not to submit it to the Legislative Yuan (LY). CAA informed AIT/T that there are several areas in which the Civil Aviation Law is not consistent with the Montreal Convention, but most of the other areas favor the interests of the carriers. Wu said that the airlines would continue to urge CAA to submit the amendment to the LY, but she believes there is no need for AIT/T to further engage the Taiwan government on this issue at this time. End summary.

Airline Concern

2. (SBU) United Airlines Taiwan Manager Andrea Wu approached AIT/T Econ Section to raise concerns about Taiwan Civil Aviation Law Article 91, which requires airlines to reimburse passengers for expenses incurred due to delay -- even if the cause of the delay is beyond the control of the airline (force majeure). (The relevant text of Article 91 is provided below.) She reported that this requirement has resulted in considerable additional expense for airlines, especially during the last Lunar New Year travel period, which saw numerous delays due to fog in Taipei. She also expressed concern that the requirement raised expectations of Taiwan passengers and potentially exposed carriers to liability when Taiwan passengers travel in other regions. Wu argued that the current Taiwan regulation is not consistent with international practice or the Montreal Convention of 1999. AIT/T agrees with Wu's assessment.

3. (SBU) Wu also explained that Taiwan's Civil Aeronautics Administration (CAA) had drafted an amendment that corrected the problem and followed the Montreal Convention standards. (Text of the draft amendment is provided below.) However, CAA had informed the airlines that it had decided not to put the amendment forward to the Legislative Yuan (LY) during the current session. According to Wu, CAA was reluctant to add another item on top of numerous security related amendments that it had to move forward. Wu added that CAA wanted to address the problem instead by asking airlines to document their current compensation practices with CAA. It was not clear to Wu (nor is it to us) how this would help resolve carrier concerns. Wu told econoff that United would not comply with this request unless ordered by Taiwan courts to do so. She argued that providing such documentation would tacitly confirm the liability of the carriers.

4. (SBU) Wu, who recently completed a term as the president of the American Chamber of Commerce in Taipei (Amcham), informed us that Amcham would include this issue in its annual white paper for 2005. Taiwan's European chamber included it in its white paper this year. Northwest Airlines Taiwan Manager Raymond Chang called econoff at Wu's request to confirm that Northwest shared United's concerns and agreed with Wu's assessments. Amcham member British Airways also concurs.

CAA Plans

5. (SBU) In an April 28 meeting with CAA Air Transport Director Peter C.W. Hou, econoff inquired about CAA's position on the issue and plans to amend Article 91. Hou agreed that the current regulations are not consistent with international standards. He confirmed that CAA had drafted an amendment but decided not to put it forward to the LY during this session. In addition to the argument cited by

Wu that CAA had too many other amendments to move forward, Hou also claimed that CAA feared that proposing an amendment to Article 91 could lead to unforeseen negative consequences for air carriers. He explained that LY members are generally much more sympathetic to the concerns of consumers (voters) than air carriers. According to Hou, CAA fears that if asked to address Article 91, LY members will seek to find other ways to increase the benefits of the Civil Aviation Law to consumers at the expense of the airlines.

16. (SBU) Hou also told econoff that his office had recently analyzed all of the regulations in the Civil Aviation Law to identify those that were not consistent with international standards. Hou claimed that of all of those areas identified, Article 91 was the only one that favored the interests of consumers. All others benefited the carriers. He provided econoff a copy of the report (available only in Chinese). Our review of the study also concludes that where the Montreal Convention and Civil Aviation Law differ, the Civil Aviation Law more often favors the carriers.

#### Next Steps

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17. (SBU) After discussing this issue with CAA, AIT/T went back to United's Wu to discuss the carrier's strategy for resolving this problem. Wu was not aware of the Civil Aviation Law's other disparities with the Montreal Convention that favor the carriers. She informed econoff that the airlines and Taipei's Amcham would continue to push the Taiwan government to amend Article 91. She did not feel it would be necessary for AIT to further engage the Taiwan government at this time.

#### Article 91 Text

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18. (U) The following is the relevant text of Article 91 and CAA's draft amendment:

Begin current text: If any passenger suffers a loss due to flight delay, the air carrier shall be liable for damage, provided that such delay is caused by force majeure, and there is no established customary practice, such damages shall be limited to the necessary additional expenses incurred by the passenger due to the delay. End current text.

Begin amendment text: The air carrier shall be liable for damages occasioned by delay in the transportation of passengers, baggage or goods. The air carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. End amendment text.

PAAL